



## **Town of Moultonborough Zoning Board of Adjustment**

### **Notice of Decision**

**Appeal from Administrative Decision by Board of Selectmen  
In Letter dated November 18, 2011 to Deny Restoration of Involuntarily  
Merged Lot  
Christopher Carpenter Trust/Map 175, Lot 13**

**January 18, 2012**

**Applicant: Christopher Carpenter Trust  
C/o Christopher Carpenter  
809 S. Warson Road  
St. Louis, MO 63124**

**Location: 62 Sticks 'n Stones Road, Moultonborough, NH (Tax Map 175, Lot 13)**

On January 4, 2012, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Christopher Carpenter Trust (hereinafter referred to as the "Applicant" and/or "Owner") for an Appeal of an Administrative Decision by the Board of Selectmen to deny the applicant's request to restore the alleged involuntary merger of the subject lot based upon the findings, documents and recommendations of a staff technical review committee.

Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 62 Sticks 'n Stones Road, Moultonborough, NH (Tax Map 175, Lot 13).
- 2) The applicant is the owner of record for the lot.
- 3) The applicant was represented by Atty. Regina Nadeau.
- 4) The lot is located in the Residential/Agricultural Zoning District.
- 5) Atty. Nadeau argued that due to the fact that Tract 1 and Tract 2 were described in the deed as separate entities, they were in fact two separate lots that must have been merged by the Town.
- 6) Atty. Nadeau presented plans prepared by surveyors in the 1960's showing Tract 1 and Tract 2 in support of her argument before the Board. She recounted the history of the division of the original main parcel into development lots and the right of way.

- 7) A surveyor, Dean Clark of DMC Surveyors of Laconia, at the request of Atty. Nadeau, presented testimony as to the meaning of the delineation line on the plan between the two Tracts, citing other examples of surveyor's plats and plans.
- 8) Town Planner, Bruce Woodruff presented the case for the Board of Selectmen by noting that NH RSA 674:39:aa mandates that the burden of proof resided with the Town, and to that end, a technical review committee met and researched all Town records and performed a limited title search, subsequently submitted to the Board of Selectmen for their review and deliberation. Said records review revealed that there are no documents on record that show the Town notified the owners that the tracts were being merged. Additionally, the review by the Tax Collector shows that the Town has never issued more than one tax bill and a title search reveals one deed throughout the chain.
- 9) Mr. Woodruff testified that customarily tracts named in deeds for one parcel were worded that way because each tract had a different purpose within the parcel. In this case, it is clear from reviewing the deed language that the intent for Tract 2 was that of right of way land for Tract 1, the development lot, and other adjacent lots. This parcel and specifically, Tract 2 is the subject of a reservation of a right for the use of a private road by others, which fact bolsters the idea that this was intended to be a narrow strip of land for access only.
- 10) Mr. Woodruff spoke about the meaning of the dashed line that separated Tract 1 from Tract 2 by explaining that even though a legend was absent, the actual boundary lines for parcels on the plan are depicted as solid lines while the line demarking the limits of Tracts 1 and 2 within the parcel was a different symbology which suggested a different type of land entity than distinct lot.
- 11) Mr. Woodruff testified about the reason why a municipality would merge non-conforming (as to Zoning dimensional requirements), contiguous in same ownership lots in the first place. He noted this was the so-called Doctrine of Merger, and that the Town would have no interest in this prior to the date of first enactment of a zoning ordinance in Town. That date, October 15, 1985, came long after this lot was shown as one and taxed with one bill in Town. Mr. Woodruff offered examples of letters sent to land owners who owned contiguous, non-conforming lots explaining that the Town was treating them as one henceforth. Staff found no such letter for the subject parcel.
- 12) Atty. Nadeau stated that the Town could have lost or misplaced such a document for the subject lot.
- 13) Mr. George Burns, a direct abutter, stated the history of the original parent parcel, subsequent subdivisions in 1962 and 1967. He spoke about the moving of an access driveway that bisected the created lots and how tract 2 was created as part of the whole of the Kretschmann's lot as a dedicated right of way at the back of the lots and that it was never its own separate lot.
- 14) Based on the evidence presented, the Board took final action at the meeting of January 18, 2012.

The Public Hearing was continued to January 18, 2012. The Board of Adjustment closed the Public Hearing on January 18, 2012. Based on the above Findings of Fact, the Board of Adjustment voted by a vote of five (5) in favor (Stephens, Hopkins, Nolin, Crowe, Bickford), none (0) opposed, to **UPHOLD** the administrative decision of Board of Selectmen expressed in their Letter dated November 18, 2011 to deny the request .

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Robert H. Stephens  
Chairman, Zoning Board of Adjustment

Date \_\_\_\_\_